

Attachment to Independent Case Review Report
For CDRU # 5497 Case file # 95-300004.

Material Examiner: Malone (RO)

Remarks:

Case resulted in trial, transcript available.

INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Steve Robertson

Area(s) of Expertise: Hair and Fiber

Review commenced at: 9:30 AM (Time), 03/14/2001 (Date)

File #: 95-300004

Laboratory #(s): 10621037

Examiner(s) & Symbols

	Reviewed	Not Reviewed	Reviewed	Not Reviewed
RQ. _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Materials Reviewed

Trial testimony transcript(s) of: Michael Malone

Testimony Date(s): 3/9/92 Pages: 236-265

Laboratory Report(s):

Laboratory Number: 10621037 Date: Oct 29, 1991

Laboratory Number: _____ Date: _____

Laboratory Number: _____ Date: _____

Examiner Bench Notes of: RQ

Laboratory Number: 10621037

Initials: SRW

Was any other material reviewed? Yes No

If yes, please identify and/or describe the material: Submitting-agency letter (dated 5-19-91)

Results of Review

File #: 95-300004

Item or Specimen # Reviewed: Q1-Q10, Q16, K3, K4, K7, K8

Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?
 Yes No Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?
 Yes No Unable to Determine

Review of Testimony:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- Transcript not available.
- 3) Testimony consistent with the laboratory report(s)? Yes No Unable to Determine
 - 4) Testimony consistent with the bench notes? Yes No Unable to Determine
 - 5) Testimony within bounds of examiner's expertise? Yes No Unable to Determine

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Initials: SMC

Comments

(Set forth by above question #, if applicable.
Use "Additional Comments" Sheet, if needed)

File #: 95-300004

#1: The examiner had test procedures and instruments available at the time of examination that he could have used. By performing melting point or infrared analysis, it could have been determined if all the fibers were of the same type of polymer. This cannot be determined by the testing he performed, as he has admitted in testimony in other cases.

Malone discusses the tremendous variability in the cross-sectional shape of trilobal fibers and testifies there was absolutely no variation between the fibers recovered from the victim's clothing and the suspect's carpet fibers. However, there is no documentation that cross-sections were made from the fibers. One cannot always determine if two fibers have the same cross-sectional shape from a longitudinal view as was performed in this case.

Review completed at: 11:30 AM (Time), 03/14/2001 (Date)

Total time spent conducting review (to nearest 1/4 hour): 2:00 hours

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of 5 pages.

Steve Roberts

(Signature)

03/14/2001

(Date)

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Initials: SRW

Additional Comments
(Set forth by question #, if applicable)

File #: 95-300004

#2: This case file contains more documentation concerning the fiber analysis than most of the other Malone cases reviewed. However, the documentation, while better, is marginal. The notes are not dated or initialed and are in pencil. It is not known what "ffvvc" means in the fiber examination notes.

Malone's notes indicate "beige trilobal nylon" fibers were recovered from the victim's pants, panties, bra, socks and the paper bag which do not match the suspect's beige carpet. The presence of these beige fibers is not in the laboratory report.

#3: The laboratory report states the fibers recovered from the victim's clothing exhibit the same individual microscopic characteristics as the suspect's carpet and are consistent with having originated from that carpet. The testimony is much stronger than the report because Malone adds that, for the fibers to have come from some other source, it would have to be another carpet sample with exactly the same characteristics and, "if that other source even existed", it would also have had to be in contact with the victim. As carpet is mass produced, to state that other carpet with the same characteristics as the suspect's carpet may not exist is erroneous and implausible.

#4: The testimony is not consistent with the bench notes. Malone discusses the tremendous variability in the cross-sectional shape of trilobal fibers and testifies there was absolutely no variation between the fibers recovered from the victim's clothing and the suspect's carpet fibers. However, there is no documentation that cross-sections were made and compared.

#5: Malone testifies that "no other type of fiber I know, except carpet fibers, are made in this trilobal shape". Fibers having a trilobal shape can be found in a variety of items besides carpet.

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Initials: SM

Additional Comments
(Set forth by question #, if applicable)

File #: \ 95-300004

#5 (continued): Testimony that the microspectrophotometer can tell if the fibers have the same dye is technically incorrect. The microspectrophotometer is used to measure and compare color, it cannot identify a dye. See Journal of Forensic Sciences, Vol 33, No 6, Nov 1988, pp 1332-1344 and Vol 35, No 2, March 1990, pp 301-315:

The comment in #3 also applies to #5.

Initials: SAC